

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5391 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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N S GADHAVI

Versus

STATE OF GUJARAT

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Appearance:

MR SHALIN MEHTA for Petitioner

None present for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/02/98

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

2. The petitioner, an Ex-Sales Tax Officer of the Sales Tax Department of the Government of Gujarat, filed this special civil application and prayer has been made for direction to the respondents to allow the petitioner to cross efficiency bar with effect from 1-1-1978 and fix petitioner's pay accordingly and grant to him all the

consequential benefits like seniority, arrears of salary etc. Second prayer has been made that the respondents may be directed to treat the petitioner as if there was no adverse remark at all in his confidential reports and consider him for promotion and promote him to the post of Sales Tax Officer Class I with effect from 24th June, 1981 and grant to him all the consequential benefits flowing therefrom like arrears of salary, seniority etc.

3. The learned counsel for the petitioner submitted that the withholding of crossing of Efficiency Bar by the petitioner with effect from 1-1-1978 is wholly arbitrary and unjustified. The service record of the petitioner though was adverse but those adverse remarks given to him could not have been taken into consideration as in one case the overall assessment was taken to be fair and secondly, the petitioner has not been given any warning or opportunity to improve his work and without doing the same, the adverse remarks have been recorded. In support of his contention, the learned counsel for the petitioner placed reliance on the two decisions of the Hon'ble Supreme Court in the case of Sukhdeo vs. Commissioner, Amravati Division reported in 1996 (5) SCC 103 and in the case of M.A. Rajasekhar vs. State of Karnataka reported in 1996 (10) SCC 369. So far as the claim of the petitioner regarding the crossing of the Efficiency Bar from 1-1-1983 is concerned, the learned counsel for the petitioner has not advanced any arguments. Regarding the claim of the petitioner for promotion to the next higher post from 24th June, 1981, the learned counsel for the petitioner contended that the case of the petitioner was not considered or even if it is considered then he has been wrongly denied the promotion. Though the petitioner was placed under suspension and departmental inquiry was held against him but ultimately he has been exonerated in the departmental inquiry and as such, he should have been given the promotion.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

5. The petitioner was not permitted to cross the Efficiency Bar on 1-1-1978 but he filed this special civil application before this Court in the year 1986. This delay on the part of the petitioner to challenge that action of the respondents before this Court after so many years has not been satisfactorily explained. What the learned counsel for the petitioner contended that the petitioner was making representations to the respondents in connection with his claim for allowing him to cross

the Efficiency Bar from 1-1-1978, but on the record of this special civil application, he has not produced any such representation. However, from the letter of the respondent dated 2-6-1986, it appears that in pursuance of the notice dated 12-7-1984, the petitioner was personally heard on 28-4-1986 and ultimately order has been passed for not accepting his claim for permitting him to cross the Efficiency Bar from 1-1-1978. It further transpires from the said letter that the petitioner had given an undertaking to the respondent that in case he is permitted to cross the Efficiency Bar from 1-1-1978 then he will not claim the arrears of salary. Taking into consideration the adverse service record of the petitioner, the respondents have not allowed him to cross the Efficiency Bar either from 1-1-1978 or from any later date.

6. During the course of arguments, the learned counsel for the petitioner halfheartedly made the submission that personal hearing has not been given to the petitioner before not allowing the petitioner to cross the Efficiency Bar from 1-1-1978 but when he was confronted with the letter of the respondent dated 2-6-1986 he has not pressed the same. From this letter it is clearly borne out that the petitioner has been given post-decisional hearing in the matter.

7. Leaving apart this delay otherwise also on merits, I do not find any case in favour of the petitioner. If we go by the facts of the special civil application, it is suffice to say that the service record of the petitioner is blameworthy and he has been served with the adverse remarks in many of the years.

8. The petitioner has made a grievance that before recording the adverse remarks he has not been given any opportunity to correct himself or improve his work but these are the matters to be agitated and raised at an appropriate time. This plea cannot be permitted to be taken after so many years of communication of the adverse remarks. It is true that in one of the years, overall assessment of the work of the petitioner has been reported to be fair but if we go by his confidential report then it is clearly borne out that his work was not satisfactory on many counts. Secondly, in his service record there are many of adverse remarks. So the decision of the respondents not to permit the petitioner to cross the Efficiency Bar from 1-1-1978 cannot be said to be arbitrary or illegal. Though the learned counsel for the petitioner has made contention that before recording the adverse remarks, the petitioner has not

been pointed out any deficiency in his working but from the reply to the special civil application, I find that the petitioner has been given sufficient opportunity to improve his work and still he has not improved his work. From the reply to the special civil application, I also find that he was not allowed to cross the Efficiency Bar from 1-1-1983 due to adverse remarks in his confidential report. Not only this, from the reply I find that there was penalty given to the petitioner also. If we go by the reply to the special civil application and the fact that the facts stated in the reply have not been controverted by the petitioner by filing any rejoinder, the action of the respondents not to allow the petitioner to cross the Efficiency Bar at both the stages i.e. 1-1-1978 and 1-1-1983 is perfectly legal and justified.

9. So far as the claim of the petitioner regarding his promotion to the Class-I post with effect from 24-6-1981 is concerned, it is suffice to say that his case was considered by the Selection Committee for promotion to the post of Sales Tax Officer Class-I but looking to his annual confidential reports and overall performance as Sales Tax Officer Class-II and also the conditions as per Finance Department Notification dated 4-5-1981 were not fulfilled by him, he was not promoted. The criteria for promotion to the post of Sales Tax Officer Class-I was proved merit and efficiency, and as such, in the presence of the adverse service record of the petitioner, if he was held to be not suitable for promotion, it cannot be said that the Selection Committee has acted arbitrarily. The petitioner has only a right of consideration for promotion and that right has not been denied but it is different matter that because of his adverse service record, he could not stand to competitive merits with others.

10. In the result, this special civil application fails and the same is dismissed. Rule discharged.

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